

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re: New York City Policing During Summer 2020
Demonstrations

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This filing is specifically related to:

Payne v. de Blasio, et al.

Civil Action No.:
20-CV-8924 (CM) (GWG)

-----X
Sierra v. City of New York, et al.

Civil Action No.:
20-CV-10291 (CM) (GWG)

-----X
People v. City of New York, et al.

Civil Action No.:
21-CV-0322 (CM) (GWG)

-----X
Sow v. City of New York, et al.

Civil Action No.:
21-CV-0533 (CM) (GWG)

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ATTORNEY DECLARATION IN SUPPORT

STEPHEN MC QUADE, an attorney admitted to practice in the United States District Court for the Southern District of New York, declares, pursuant to 28 U.S.C. §1746, under the penalty of perjury, the following:

1. I am Senior Counsel with the law firm of Pitta LLP, counsel for Proposed Intervenor Detectives' Endowment Association (hereinafter "DEA" or "Union") in the above-captioned matters; and as such, I am fully familiar with the facts and circumstances set forth herein.

2. I submit the instant declaration in support of the Motion to Intervene, dated March 30, 2022, filed on behalf of the DEA.

3. The factual basis upon which this Court may rely in deciding the instant application is set forth in, *inter alia*, the Declaration of Paul DiGiacomo, dated March 30, 2022, as he is the President of the DEA (hereinafter “DiGiacomo Declaration”). Annexed hereto as Exhibit 1 is a true and accurate copy of the DiGiacomo Declaration.

4. The collective bargaining agreement by and between the City and DEA covers the time period from April 1, 2012 to March 31, 2019 (hereinafter “CBA”); further, the City and DEA recently entered into a successor Memorandum of Agreement, dated December 28, 2021, covering the time period from April 1, 2019 to May 31, 2022 (hereinafter “MOA”) (collectively, “Agreement”). Annexed hereto as Exhibit 2 is a copy of the CBA and MOA.

5. On March 4, 2022, the United States Court of Appeals for the Second Circuit (hereinafter “Second Circuit”) held that the Patrolmen’s Benevolent Association (hereinafter “PBA”) was entitled to intervene in the instant matters because the PBA demonstrated an “interest in the personal safety of its member officers at the merits stages” of these actions that are seeking declaratory or injunctive relief. *In re NYC Policing During Summer 2020 Demonstrations*, No. 21-1316, __ F.4th __, 2022 WL 627436, at *1 (2d Cir. March 4, 2022) (hereinafter “Appellate Opinion”). (See Dkt. 432).

6. On March 10, 2022, I contacted counsel for Plaintiffs, both telephonically and electronically, expressing a desire by the DEA to intervene in the above-captions matters and inquiring about the willingness of Plaintiffs to stipulate to the same.

7. On that same date, I contacted counsel for Defendants, both telephonically and electronically, with the same proposition.

8. These requests were made in the hopes of obtaining their respective consent to do so and obviating the need for additional motion practice, given that the arguments made in the

Appellate Opinion closely track the arguments advanced by the DEA in its original motion to intervene back in March 2021. (*See* Dkt. 51, 52, 53, and 101).

9. To date, neither Plaintiffs nor Defendants have substantively responded to these requests, thereby necessitating the filing of the instant motion for intervention.

10. The Union respectfully directs the Court to its previous decision in *Nunez v. City of New York*, Docket No.: 11-CV-5845 (LTS) (JCF). (*See* Dkt. 52-3).

11. As cited to in the accompanying memorandum of law, please find annexed to the instant motion the following decisions of the New York City Board of Collective Bargaining (hereinafter “BCB” or “Board”)¹ that may not be readily searchable on Westlaw and/or Lexis, as per Section V(D) of Your Honor’s Individual Practices and Procedures:

12. A true and accurate copy of the BCB Decision in *Uniformed Firefighters Association*, 3 OCB2d 16 (BCB 2010). (*See* Dkt. 52-6).

13. A true and accurate copy of the BCB Decision in *EMS Superior Officers Association*, 79 OCB 7 (BCB 2007). (*See* Dkt. 52-8).

14. A true and accurate copy of the BCB Decision in *Correction Officers Benevolent Association*, 49 OCB 40 (BCB 1992). (*See* Dkt. 52-12).

15. A true and accurate copy of the BCB Decision in *Uniformed Firefighters Association*, 49 OCB 39 (BCB 1992). (*See* Dkt. 52-13).

16. A true and accurate copy of the BCB Decision in *EMS Superior Officers Association*, 75 OCB 15, at 16 (BCB 2005). (*See* Dkt. 52-14).

17. A true and accurate copy of the BCB Decision in *Uniformed Firefighters Association*, 43 OCB 70 (BCB 1989). (*See* Dkt. 52-15).

¹ At the outset, the DEA would like to apprise the Court that the administrative decisions issued by the BCB can be found either in the Administrative Materials library on Lexis or through a searchable database maintained on the OCB’s website, which is: <http://www.ocb.ocb-nyc.org/general-info>. {00696011-3}

18. In light of the fact that the Second Circuit has not issued its mandate regarding the Appellate Opinion and the fact that the Court's Order, dated March 18, 2022, (Dkt. 456), stayed the PBA's obligation to file/serve its responsive pleadings in connection with the above-captioned matters, if and when intervention is granted, the Union similarly will file/serve its responsive pleadings concerning the above-captioned matters in the timeframe set forth by the Court.

Dated: New York, New York
March 30, 2022

PITTA LLP

By: _____



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